

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTTAB

JULY 31, 97

Paper No. 14
PTH

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Inset Incorporated

Serial No. 74/481,825

James W. Badie of Wyatt, Gerber, Burke & Badie for Inset Incorporated.

Angela M. Micheli, Trademark Examining Attorney, Law Office 108 (David E. Shallant, Managing Attorney).

Before Hanak, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

This is an appeal from the Trademark Examining Attorney's refusal to register the mark THE FUEL STABILIZER for goods which were subsequently identified as "emission reduction units, namely fuel stabilizing devices for land vehicles."¹ Registration has been refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that the mark merely describes applicant's goods.

¹Serial No. 74/481,825 filed January 24, 1994; alleging a date of first use of January 18, 1990 and a date of first use in commerce of March 1991.

Further, the Examining Attorney has required that applicant amend the classification of its goods from class 11 to class 7.²

Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

We turn first to the requirement to amend the classification of applicant's goods. As pointed out by the Examining Attorney, matters relating to classification are governed by the Acceptable Identification of Goods and Services Manual (ID Manual). Applicant argues that the Examining Attorney misapprehends the nature of applicant's goods. However, our review of the manual indicates that emission reduction units for motors and engines are classified in class 7. Thus, we find the requirement to amend the classification of the goods to class 7 to be proper.

We turn next to the refusal to register under Section 2(e)(1) of the Trademark Act. The Examining Attorney maintains that "applicant's proposed mark immediately and unequivocally describes the purpose, function and nature of applicant's goods." (Brief, p. 3.)

²We note that, in her first Office action, the Examining Attorney required that the goods be amended from class 11 to class 12. In her final office action, she required that the goods be amended from class 11 to class 7. It appears that, during the pendency of this application, Office classification policy changed such that certain goods which were formerly classified in class 12 are now classified in class 7. Thus, while the Examining Attorney, in her final Office action, "changed" the requirement from class 12 to class 7, no new issue was raised, and it was not improper for her to make the requirement final.

In support of the refusal to register, the Examining Attorney has submitted an entry from Webster's Third New International Dictionary defining "stabilizer" as "a distilling column for decreasing the evaporative tendency of petroleum products (as gasoline) by removal of gaseous and low-boiling hydrocarbons." Also, the Examining Attorney submitted a story from the Nexis data base in which applicant's device is discussed. Portions of that story are excerpted below:

It looks a bit like a slim beer can with a boltlike valve on each end, but it reportedly holds a great deal more promise than 12 ounces of golden lager.

...

It's the Inset Fuel Stabilizer, and its being touted as a simple solution to auto emission problems.

...

The device, manufactured by Inset Inc., of Oakland, N.J., "realigns molecules for 100 percent combustion" in a vehicle's engine, said account executive Scott Marshall, who declined to give away the technological workings that create pure burn.

...

Marshall said he installed a stabilizer in his wife's 1990 Honda and within 11 days, hydrocarbon counts dropped from 145 parts per million to 9 parts per million. Carbon monoxide emissions were eliminated completely in that time, Marshall said.
(Chicago Tribune, May 3, 1994)

Finally, the Examining Attorney submitted an exerpt from a patent for an induction control device, which states as follows:

The air, by passing through the flow restriction element and being polarized by friction, facilitates optimal molecular bonding between the gasoline and air molecules prior to entry into the combustion chambers. The flow restriction element, in causing the polarization acts to stabilize the number of bondable molecules..."

Applicant, in urging reversal of the refusal to register, argues that "[a]s noted from the description of the device and its function of aligning the fuel and air molecules, the term 'stabilizer' is arbitrary, and at best suggestive of applicant's device." (emphasis in original) (Brief, p. 5).

A mark is considered to be merely descriptive of goods or services, under Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

We find that THE FUEL STABILIZER, used for emission reduction units, namely fuel stabilizing devices for land vehicles, directly conveys to the relevant purchasers that these goods are fuel stabilizers, i.e., they remove gaseous and low-boiling hydrocarbons from fuel. No amount of imagination or speculation is necessary for customers and prospective purchasers to readily perceive the merely

descriptive significance of the THE FUEL STABILIZER as applied to applicant's goods.

In this regard, we note the following benefit of applicant's product as outlined in its product brochure:

-Reduces and eliminates hydrocarbons/
particulates

Accordingly, we conclude that applicant's mark, when applied to the above-identified goods, is merely descriptive of them.

Decision: The refusal to register is affirmed, and the requirement to amend the classification of the goods is affirmed.

E. W. Hanak

G. D. Hohein

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

Ser No. 74/481,825

Ser No. 74/481,825